

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-0891V

UNPUBLISHED

PAUL BISHOP,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 11, 2023

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Tetanus Diphtheria acellular
Pertussis (Tdap) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Matthew F. Belanger, Faraci Lange, LLP, Rochester, NY, for Petitioner.

Naseem Kourosh, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On February 8, 2021, Paul Bishop filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleged that he suffered a left shoulder injury related to vaccine administration (“SIRVA”), a defined Table Injury, after receiving a tetanus, diphtheria, acellular pertussis (“Tdap”) vaccine on March 12, 2020. Petition at ¶¶ 1-2, 6. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 8, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for his SIRVA injury. ECF No. 41. On May 11, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

\$56,402.85, representing compensation in the amounts of \$55,000.00 for pain and suffering, \$982.41 for past expenses, and \$420.44 for lost wages. Proffer at 2, ECF No. 43. In the Proffer, Respondent represented that Petitioner agrees with the proffered award.³ Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$56,402.85, representing compensation in the amounts of \$55,000.00 for pain and suffering, \$982.41 for actual unreimbursable expenses, and \$420.44 for lost wages in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Although Respondent agrees that the amount of damages is appropriate, he reserves his right to appeal my ruling regarding entitlement. Proffer at 2, 2 n.1.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

PAUL BISHOP,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

No. 21-891V (ECF)
Chief Special Master Corcoran

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On February 8, 2021, Paul Bishop (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (2018) (the “Vaccine Act”). Petitioner alleged that he suffered a left-sided shoulder injury related to vaccine administration as a result of a tetanus-diphtheria-acellular pertussis vaccine. ECF No. 1.

On August 18, 2022, the Secretary of Health and Human Services (“respondent”) filed a report contesting petitioner’s entitlement to compensation under the Vaccine Act. ECF No. 33.

On March 14, 2023, the Chief Special Master issued findings of fact and conclusions of law. ECF No. 36.

Based on the Chief Special Master’s findings of fact and conclusions of law, on May 5, 2023, respondent filed an amended report conceding that compensation under the Vaccine Act is appropriate in this case. ECF No. 40.

On May 8, 2023, the Chief Special Master issued a Ruling on Entitlement, finding that petitioner is entitled to compensation.¹ ECF No. 41. On the same date, the Chief Special Master issued a Damages Order. ECF No. 42.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$56,402.85, consisting of \$55,000.00 in pain and suffering damages, \$982.41 in past expenses, and \$420.44 in lost wages. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following: a lump sum payment of **\$56,402.85**, in the form of a check payable to petitioner.²

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

¹ Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of the damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master's May 8, 2023 ruling on entitlement.

² Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

/s/ Naseem Kourosh
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DATED: May 11, 2023